

## Message Text

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43

ACTION EUR-12

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R 151738Z MAY 76

FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC 9819

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E.O. 11652: N/A

TAGS: ETEL, CA

SUBJECT: TELEVISION POLICY QUESTION: EMBASSY  
RECOMMENDATION

POUCHED TO ALL CONSULS IN CANADA

REF: STATE 110510

1. PRESENT SITUATION IN OTTAWA APPEARS AS FOLLOWS:

(A) CRTC HAS DONE NOTHING WITH U.S. STATIONS' PROPOSALS  
OTHER THAN TO INDICATE PRIVATELY THAT THEY ARE NOT ACCEPTABLE.  
IT IS VAGUELY TALKING ABOUT ALTERNATIVES OR COUNTER PROPOSALS,  
BUT HAS COME UP WITH NOTHING AND DOES NOT APPEAR LIKELY TO  
DO SO IN NEAR FUTURE--AS IT AWAITS PASSAGE OF BILL C-58 AND  
SUPREME COURT DECISION UPHOLDING ITS RIGHT TO ORDER  
DELETION. CHAIRMAN BOYLE IS CONCERNED ABOUT THE PROGRAM  
PROTECTION SITUATION AT WINDSOR (SEE OTTAWA 1477 AND 1742).

(B) C-58 IS BEING CONSIDERED IN SENATE IN COMMITTEE  
ATMPOSHPERE REASONABLY FAVORABLE TO U.S. STATIONS, BUT  
ABILITY OF SENATE (IF IT CHOOSES TO DO SO) SIGNIFICANTLY  
TO AFFECT PASSAGE AND SUBSEQUENT IMPLEMENTATION IS NOT  
PROVEN( SEE OTTAWA 1285 AND 1416). FURTHERMORE, BASIC  
STRATEGY OF U.S. STATIONS BEFORE SENATE COMMITTEE IS

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BASED ON IDEA THAT CA-58 IS UNDER DISCUSSION BETWEEN USG

AND GOC AND THIS MAY HAVE BEEN UNDERCUT SEVERELY BY COMMUNICATIONS MINISTER'S TESTIMONY MAY 6 (SEE OTTAWA 1914. (C) DOC IS STRONGLY COMMITTED TO C-58 BUT WOULD PROBABLY LIKE TO BURY DELETION POLICY BECAUSE IT HAS BECOME SUCH A POLITICAL IRRITANT. IT IS TRYING TO DEVELOP LONG-RANGE POLICY FOR REDUCING DEPENDENCE OF CANADIAN CABLE TV ON INDIVIDUAL U.S. BORDER STATIONS IN FAVOR OF A SYSTEM OF DIRECT RELAY OF U.S. PROGRAMS WITH PRODUCERS AND PERHAPS NETWORKS RECEIVING COMPENSATION, AND IS PUSHING AT STAFF LEVEL AS AN INTERIM MEASURE THE CONCEPT OF "NON-SIMULTANEOUS SUBSTITUTION" AS AN ALTERNATIVE TO THE STATIONS' PROPOSAL (SEE OTTAWA 1767 AND 1875).

(D) EXTAFF TO DATE HAS NOT BEEN VERY ACTIVE IN THE INTER-AGENCY DEALINGS, BUT RECENTLY A WORKING LEVEL OFFICIAL SUGGESTED THAT EXTAFF MIGHT MAKE AN EFFORT TO STIMULATE CRTC DIALOGUE WITH THE STATIONS.

2. UNDERLYING ALL THIS, I FEEL, IS AN ASSESSMENT THAT INACTION OR DELAY--AT LEAST IN THE SHORT RUN--IS IN THE BEST INTEREST OF ALL THE CANADIAN PARTIES. DOC AND CRTC FEEL TIME WILL PERMIT PASSAGE AND IMPLEMENTATION OF C-58 AS WELL AS PRODUCE A FAVORABLE COURT DECISION UPHOLDING NOT ONLY CRTC POWER TO REQUIRE DELETION BUT ALSO FEDERAL (VS. PROVINCIAL) RESPONSIBILITY FOR ALL ASPECTS OF CABLE TV. EXTAFF WITH AN EYE TO THE U.S. POLITICAL SCENE IN AN ELECTION YEAR PROBABLY DOUBTS THE ABILITY OF THE STATIONS TO SECURE IN NEXT SEVERAL MONTHS ANY SIGNIFICANT USG OR CONGRESSIONAL ACTION HARMFUL TO CANADA. THUS, NO ONE HERE APPEARS TO HAVE ANY INCENTIVE TO GET THE ISSUE RESOLVED SOON.

3. SINCE NO FURTHER IMPLEMENTATION OF DELETION IS CONTEMPLATED IN THE NEAR FUTURE (PENDING THE OUTCOME OF THE COURT CASE) AND, THEREFORE, U.S. STATIONS ARE NOT BEING FURTHER HURT BY THAT POLICY, IT MAY BE ARGUED THAT MAINTENANCE OF THE STATUS QUO IS ALSO IN BEST INTEREST OF U.S. STATIONS. THIS IS TEMPORARY SITUATION, HOWEVER, AND ONCE C-58 HAS PASSED AND THE COURT DECISION HAS BEEN HANDED DOWN, WE MAY FIND IT MORE DIFFICULT TO WORK OUT COMPROMISE LIMITED OFFICIAL USE

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SOLUTIONS. CONSEQUENTLY, I AGREE USG SHOULD TAKE INITIATIVE AND CALL FOR SECOND MEETING (AS SUGGESTED IN PARA 10 REFTTEL) BUT I BELIEVE WE SHOULD NOT REPEAT NOT PROPOSE TO FOCUS MEETING NARROWLY ON HOW GOC REACTS TO U.S. STATIONS' PROPOSALS. ANSWER IS QUITE CLEARLY NEGATIVE AND WE CAN ANTICIPATE THAT GOC WILL USE MEETING TO STATE OFFICIALLY WHAT OUR CONTACTS HAVE BEEN TELLING US PRIVATELY. WE SHOULD EXPLICITLY ALLOW FOR ANY COUNTER PROPOSAL WHICH

GOC MIGHT WISH TO SUGGEST AND ALSO TO SOME DISCUSSION  
OF BILL C-58 IMPLEMENTATION. WE SHOULD, OF COURSE,

MAKE CLEAR THAT THIS SECOND MEETING IS NOT THE LAST  
MEETING BUT MERELY ANOTHER STEP IN THE CONTINUING  
BILATERAL DIALOGUE AND THAT ANY COUNTERPROPOSALS WOULD FORMALLY  
HAVE TO BE MADE BY CRTC TO THE BORDER STATIONS, NOT TO THE USG.

4. RE BILL C-58: U.S. STATIONS' OTTAWA REPS ARE  
CONVINCED SENATE COMMITTEE WILL PRESS GOC TO DEFER OR,  
AT MINIMUM, STAGE ENTRY INTO FORCE OF BILL'S BROADCAST  
PROVISIONS, IF IT CAN BE MADE CLEAR THAT BILL IS SUBJECT  
OF CONSULTATION BETWEEN THE TWO GOVERNMENTS. (STAGING  
WOULD PROBABLY REQUIRE AMENDMENT OF PRESENT LANGUAGE OF  
BILL.) GOC IS MAKING MAJOR EFFORT TO EMPHASIZE THAT IT  
IS NOT AT PRESENT TIME IN CONSULTATION WITH USG ON C-58. AT  
JANUARY SESSION WE RAISED SUBJECT BY  
SUGGESTING C-58 NOT BE IMPLEMENTED WHILE CONSULTATIONS  
ARE TAKING PLACE AND THAT ITS ENTRY INTO FORCE  
BE STAGED OVER TIME. ALL CANDEL PROMISED WAS TO RELAY OUR  
VIEWS TO MINISTERS. PRESUMABLY THIS HAS BEEN DONE, BUT NO  
REPLY MADE AND IT APPEARS GOC IS IGNORING OUR REQUEST.  
IT WOULD BE HELPFUL IF, IN CALLING FOR SECOND MEETING,  
AT A MINIMUM WE REPEATED OUR JANUARY SUGGESTIONS TO CONVEY  
THE IDEA THAT WE REGARD C-58 AS PART OF THE DIALOGUE. WE  
MIGHT APPROPRIATELY GO FURTHER AND OBJECT TO C-58'S BROADCAST  
PROVISIONS NOT ON LEGAL GROUNDS BUT ON POLITICAL  
GROUNDS AND CITING CONSIDERATIONS OF EQUITIEY--WITH A VIEW  
TO BOTH SUPPORTING THE STATIONS' TESTIMONY BEFORE THE SENATE  
AND PERHAPS CREATING A BASIS FOR A COMPROMISE  
ON STAGED EFFECTIVENESS. THE FACT THAT THIS IS A  
TAX MEASURE SHOULD NOT DETER US FROM SPEAKING  
OUT; ITS EFFECT IS THAT OF A 50 PERCENT TARIFF ON EXPORT  
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OF SERVICES; AND OTHER GOVERNMENTS (INCLUDING CANADA ON  
DISC) HAVE OBJECTED TO U.S. TAX MEASURES IN THE PAST. THIS  
TACTIC WOULD APPEAR TO BE CONSISTENT WITH REMARKS MADE BY  
DEPUTY ASSISTANT SECRETARY VINE IN WINNIPEG MAY 13. IN KEEPING  
WITH HIGH LEVEL CONTACTS. OUR STANCE WOULD NOT BE TO  
OPPOSE C-58 PER SE, BUT ONLY ITS EARLY, UNPHASED IMPLEMENTATION.

5. IT COULD ALSO BE USEFUL TO ATTEMPT TO BROADEN THE  
DISCUSSION FROM DELETION AND C-58 TO THE FUTURE RELATION-  
SHIP OF CANADIAN TO U.S. TV. GOC (BOTH DOC AND CRTC) IS  
ACTIVELY ATTEMPTING TO DEVELOP A SYSTEM-PROBABLY BASED  
ON SATELLITE FEED TO CABLE SYSTEMS-- WHICH WOULD ELIMINATE  
CANADIAN DEPENDENCE ON INDIVIDUAL U.S. BORDER STATIONS FOR  
U.S. PROGRAMS, IN FAVOR OF A CENTRALIZED "GATEWAY" SYSTEM  
AND ONE WHICH WOULD BETTER PROTECT THE INTERESTS OF

CANADIAN PURCHASERS OF RIGHTS TO U.S. PROGRAMS TO SHOW THEM WITHOUT COMPETITION FROM U.S. STATIONS WHO HAVE BOUGHT ONLY LOCAL RIGHTS. THEY APPEAR TO REGARD COMPENSATION TO PROGRAM PRODUCERS AND POSSIBLY U.S. NETWORKS AS NECESSARY, BUT NOT TO U.S. BORDER STATIONS. THIS RESTRUCTURING OF THEIR SYSTEM WILL HAVE SIGNIFICANT COMMERCIAL IMPLICATIONS AND MAY REQUIRE USG COOPERATION (E.G., LICENSING OF EARTH STATIONS IN U.S. TO ACCESS CANADIAN SATELLITES WITH PROGRAM FEEDS. GOC SHOULD BE INVITED TO EXPLAIN ITS THINKIN IN SYSTEMATIC MANNER WITH VIEW TO IDENTIFYING LIKELY POINTS OF FRICTION AND COOPERATION. DEPENDING ON WHAT THEY PRESENT AND WHAT TIME FRAME IS INVOLVED, USG COULD PRESS FOR ELIMINATION OF DELETION AND NON-IMPLEMENTATION OF C-58 UNTIL NEW SYSTEM IS IN PLACE. IN RETURN WE COULD HOLD OUT POSSIBILITY OF FAVORABLE REACTION TO SPECIFIC PROPOSALS WHICH MAY REQUIRE RECOMMENDATION OF USG.

6. I BELIEVE WE SHOULD PROPOSE SPECIFIC BUT SUFFICIENTLY DISTANT DATE (E.G., EARLY JULY) FOR MEETING SO THAT GOC WILL HAVE TIME TO DEVELOP COUNTER PROPOSALS IF IT SO DESIRES.

IF YOU AGREE, I WOULD PUT THIS TO EXTAFF UNDER-  
SECRETARY ROBINSON IN PRECISELY THAT CONTEXT. BOYLE AND  
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ROBINSON HAVE BOTH ALLUDED TO SUCH PROPOSALS PARA 7. IN MEANTIME, I SUGGEST WASHINGTON EXPLORE WHETHER "NON-SIMULTANEOUS SUBSTITUTION" IS A POSSIBLE ARRANGEMENT WE CAN LIVE WITH. ALSO WE SHOULD DETERMINE WHETHER USG CAN DO ANYTHING TO ALLEVIATE THE WINDSOR PROBLEM, PROGRAM PROTECTION, THAT IS OF SOME CONCERN UP HERE, AND WHETHER THERE IS MERIT AT THIS TIME IN BROADENING DISCUSSION AS PROPOSED IN PARA 5 ABOVE.  
ENDERS

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